

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

<b>IN RE: ETHICON, INC. PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION</b>	<b>Master File No. 2:12-MD-02327 MDL No. 2327</b>
<b>THIS DOCUMENT RELATES TO ETHICON WAVE 1 CASES</b>	<b>JOSEPH R. GOODWIN U.S. DISTRICT JUDGE</b>

**DEFENDANTS' MOTION TO EXCLUDE  
CERTAIN GENERAL OPINIONS OF DANIEL ELLIOTT, M.D.**

Defendants Ethicon, Inc. and Johnson & Johnson (hereinafter "Defendants") move to exclude certain general opinions of one of Plaintiffs' experts, Daniel Elliott, M.D., that are improper and/or are beyond his expertise as a pelvic surgeon and urogynecologist. Specifically, Defendants request that the Court preclude Dr. Elliott from: (1) Testifying that non-synthetic mesh procedures are a safer alternative for the surgical treatment of stress urinary incontinence and pelvic organ prolapse, because such procedures are not alternative designs and are irrelevant to a design-defect claim and because such opinions are unreliable; (2) Offering design opinions, because he is not qualified to do so and his opinions are unreliable and not offered within a reasonable degree of medical certainty; (3) Criticizing the cut of TVT mesh, because his opinions are unreliable and conflicting; (4) Speculating about the duties of a medical device manufacturer, because he is not qualified to do so and such opinions are irrelevant and inadmissible to the extent that they contain legal conclusions; (5) Testifying about alleged mesh degradation, shrinkage, contraction, and other biomaterials opinions, because such opinions are unreliable, irrelevant, and/or otherwise improper; (6) Offering opinions about regulatory

compliance and marketing, because he is not qualified to do so and such opinions are prejudicial, inflammatory, improper, speculative, and irrelevant; and (7) Offering opinions beyond Dr. Elliott's expertise and/or that are otherwise improper, because he is not qualified to do so and such opinions are inadmissible, unreliable, and/or draw legal conclusions.

As grounds for this motion, Defendants submit that Dr. Elliott cannot provide reliable, trustworthy and/or admissible testimony about these topics under the standard set forth in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993). In support of this motion, Defendants incorporate by reference their accompanying memorandum of law and rely on the following Exhibits:

1. List of cases in which Dr. Elliott has been designated by Plaintiff(s) as a general expert, Exhibit A;
2. Dr. Elliott's curriculum vitae, Exhibit B;
3. Dr. Elliott's TVT General Expert Report, Exhibit C;
4. Dr. Elliott's TVT-O General Expert Report, Exhibit D;
5. Dr. Elliott's TVT-Secur General Expert Report, Exhibit E;
6. Dr. Elliott's Prolift General Expert Report, Exhibit F;
7. Transcript of Dr. Elliott's September 26, 2015 Deposition, Exhibit G;
8. Heinonen, *et. al.*, *Tension-free vaginal tape procedure without preoperative urodynamic examination: Long-term outcome*, Int'l. Journal of Urology (2012), Exhibit H;
9. American Urological Association Guideline for the Surgical Management of Female Stress Urinary Incontinence: 2009 Update, Exhibit I;
10. American Journal of Obstetrics & Gynecology SGS Study (2014), Exhibit J;
11. *Bellew v. Ethicon, Inc.*, No. 2:13-cv-22473, Order (S.D. W. Va. Nov. 20, 2014), Exhibit K;
12. Transcript of Dr. Elliott's November 15, 2015 Deposition, Exhibit L;

13. Transcript of Dr. Elliott's November 16, 2015 Deposition, Exhibit M;
14. Garcia-Urena, *Differences in polypropylene shrinkage depending on mesh position in an experimental study*, The American Journal of Surgery (2007), Exhibit N;
15. Mamy, et. al., *Correlation between shrinkage and infection of implanted synthetic meshes using an animal model of mesh infection*, The International Urogynecological Association (2010), Exhibit O;
16. Feiner and Maher, *Vaginal Mesh Contraction*, American College of Obstetricians and Gynecologists (2010), Exhibit P;
17. Sunoco Material Safety Data Sheet, Exhibit Q;
18. Dr. Elliott's TVT Report reliance list, Exhibit R;
19. R. Langer, et al., *Long-Term (10-15 years) Follow-Up after Burch Colposuspension for Urinary Stress Incontinence*, International Urogynecology Journal (2001), Exhibit S;
20. Mayo Clinic Urinary Incontinence Webpage, Exhibit T;
21. Ford, et al., *Mid-urethral sling operations for stress urinary incontinence*, Cochrane Collaboration (2015), Exhibit U; and
22. Wang, et al, *A histologic and immunohistochemical analysis of defective vaginal healing after continence taping procedures: A prospective case-controlled pilot study*, American Journal of Obstetrics and Gynecology (2004), Exhibit V.

WHEREFORE, FOR THESE REASONS and as more fully set forth in Ethicon's supporting memorandum of law, Ethicon respectfully requests that this Court enter an order granting Ethicon's Motion to Exclude the Testimony of Dr. Daniel Elliott, M.D.

Respectfully Submitted,

/s/ Christy D. Jones

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CERTIFICATE OF SERVICE

I, Christy D. Jones, certify that on April 21, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

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